Annex 5

Guidelines for Initiating Direct Investigations

Under section 7(1)(a)(ii) of The Ombudsman Ordinance, The Ombudsman is empowered to initiate investigations of his own volition, even though no complaint on the matter has been received.

This power enables The Ombudsman to be more proactive in the approach to problems of wide public interest and concern. It is particularly useful to:

(a) follow through systemic problems which investigation of a complaint alone may not resolve;

(b) nip problems in the bud by addressing deficiencies in systems and procedures; and

(c) resolve repeated complaints, once and for all, by addressing the fundamental problems which may not be the subject of complaints, but are believed or suspected to be the underlying reasons for complaint.

To facilitate consideration of matters for direct investigation, The Ombudsman has established some general guidelines:

(a) the matter concerns public administration and involve alleged or suspected maladministration as defined in The Ombudsman Ordinance;

(b) the matter should be of sufficient dimension and complexity, representing the general interest, desire or expectation of the community, or at least a sector in the community;

(c) individual grievances will normally not be a candidate for direct investigation, as there is no reason why the individual concerned cannot come lodge a complaint personally;

(d) the matter will otherwise not be actionable under the restrictions in section 10(1) of The Ombudsman Ordinance, e.g. time bar, not the aggrieved person, but is nevertheless of grave concern to The Ombudsman;

(e) the matter is normally not subject to the jurisdiction of the Court or a tribunal constituted under any Ordinance *or* it would not be reasonable to expect the affected person(s) to resort to the Court or any tribunal for remedy; and

(f) the time is opportune for a direct investigation, weighing against the consequences of not doing so.

These are no more than guidelines and are by no means exhaustive. Much will depend on the actual matter or problems.